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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

STEPHANIE R.,

Petitioner,

v.

THE SUPERIOR COURT OF ORANGE
COUNTY,

Respondent;

ORANGE COUNTY SOCIAL SERVICES
AGENCY et al.,

Real Parties in Interest.

G034439

(Super. Ct. No. DP009600)

O P I N I O N

Original proceedings; petition for a writ of mandate to challenge an order of the Superior Court of Orange County, Irwin Pransky, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Petition granted.

Deborah A. Kwast, Public Defender, Frank Ospino, Assistant Public Defender, and Seth M. Bank, Deputy Public Defender, for Petitioner.

No appearance for Respondent.

Benjamin P. de Mayo, County Counsel, and Ward Brady, Deputy County Counsel, for Real Party in Interest Orange County Social Services Agency.

Craig E. Arthur for Real Party in Interest Minor Jaselle A.

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Stephanie R. seeks extraordinary relief (Cal. Rules of Court, rule 39.1B) from juvenile court orders terminating reunification services and scheduling a Welfare and Institutions Code section 366.26 (all statutory references are to this code) hearing for her daughter, Jaselle A., on January 3, 2005. Among other contentions, she argues there is insufficient evidence reasonable services were provided. Having reviewed the petition on the merits, we agree and grant relief.

I

On January 3, 2004, Stephanie R. called 911 and pleaded for police to arrest her and take custody of her one-year-old daughter, Jaselle A. Stephanie informed investigating officers that Jaselle's father, Fernando A.,¹ had driven off with the child after the couple argued. Stephanie explained she and Fernando had been smoking methamphetamine, she feared for Jaselle's safety, and she was unable to care for her daughter. Fernando and Stephanie were arrested and Jaselle was taken into protective custody. Police found methamphetamine inside the residence.

Two days later a social worker from the Orange County Social Services Agency (SSA) conducted a telephone interview with Stephanie. Early in the interview Stephanie seemed incoherent and had difficulty grasping basic information, but her comprehension improved as the interview progressed. She admitted she had been using methamphetamine for about three years, and on the night of her arrest had summoned police to care for her daughter because she was afraid of suffering an overdose. She did not answer when asked whether she believed she could care for her daughter, and agreed Jaselle should be placed with the maternal grandfather, Carmine R.

¹ Fernando did not participate in his reunification case plan and has not sought writ relief.

The social worker also interviewed Carmine. He explained that in 2001, Stephanie's two-year-old daughter had been beaten to death by a boyfriend, who was serving a prison sentence for the crime. He believed Stephanie started to use drugs after her child was murdered. He also suspected Fernando had physically abused Stephanie because Carmine had seen bruises on Stephanie and she had confided she was afraid of him.

Stephanie and Carmine were interviewed at SSA's offices on January 7. Stephanie appeared half asleep, spoke softly in a child-like voice, and had difficulty comprehending information concerning drug testing procedures. Carmine, interviewed separately, denied Stephanie was developmentally impaired, but conceded she was always "[a] little on the odd side." Based on Stephanie's difficulties with comprehension, the social worker rescheduled the interview.

On January 20, the worker interviewed the pair again. Stephanie admitted that on the night of the incident, her judgment was extremely impaired and acknowledged the trauma of her child's murder aroused her fears for Jaselle's safety and prompted her to call the police. She initially denied hallucinations, but prompted by her father, admitted she had seen "vampires." The night before the current incident she carried Jaselle in the rain to her Aunt Mary R.'s home, believing Jaselle was dead. Carmine believed Stephanie's drug abuse posed a danger to herself and others, and mentioned other incidents where Stephanie broke windows, chased a sister with a knife, and spoke incoherently.

Mary R., who held a Ph.D. in research psychology, believed her niece was mentally ill and required medication for her hallucinations. Mary described Stephanie's difficult childhood, which included beatings and sexual abuse by the maternal grandmother's boyfriend. Mary R. first noticed Stephanie's odd behavior in January 2004. Stephanie told her over a lunch the devil was playing games with her, people were possessed, street signs change on her, and "America's Most Wanted" was looking for her.

Carmine's wife, Doreen R., also expressed concerns about her stepdaughter's bizarre behavior. During one visit, Stephanie became upset for no apparent reason, locked herself in a bathroom for an hour and yelled profanities out a window. At the grocery store, Stephanie irrationally argued with customers and used shaving cream to write on the floor. Doreen felt unsafe around Stephanie and Stephanie's sister felt she needed treatment in a mental health facility.

Fernando expressed similar concerns to SSA on January 30. He recalled Stephanie's abnormal conduct the week before her arrest, and believed her behavior was the result of mixing methamphetamine with depression medication. The couple argued about Stephanie "'not taking care of the baby'" the night Jaselle was detained. Fernando was afraid Stephanie might hurt the baby because she was hallucinating. He admitted striking her to stop her "'psychobabble,'" but denied any other domestic violence. Fernando reported Stephanie's recent behavior had been normal.

On February 19, Stephanie pleaded no contest to an amended petition alleging a failure to protect Jaselle. (§ 300, subd. (b).) The factual allegations included unresolved drug abuse and an incident of domestic violence, but none of the allegations referred to Stephanie's mental health problems. The reunification case plan required Stephanie to participate in psychological therapy through the Dual Diagnosis Program parenting classes, and completion of a drug treatment program, also through Dual Diagnosis. Although the proposed case plan called for participation and completion of a county certified domestic violence program, the court implemented the parties' stipulation that Stephanie would participate in a personal empowerment program (PEP) if recommended by her counselor. Otherwise, she was to address domestic violence issues in counseling. A six-month status review was scheduled for August 6, 2004.

Stephanie's social worker, Hope Henry, recommended termination of reunification services in advance of the August review. According to Henry's status review report, drug tests had been negative, although three diluted specimens could not

be tested. Stephanie's Dual Diagnosis therapist, psychologist Scott Logan, reported Stephanie, who had been diagnosed with "Depression NOS" (i.e., not otherwise specified), missed several sessions, and her attendance had declined the last month. He remarked that she had fewer problems dealing with drug abuse than with her mental condition, and concurred with the decision to terminate services, although the report failed to provide the reasons for Logan's conclusion. Henry based her recommendation on Stephanie's intermittent attendance and lack of insight into the issues that brought her daughter before the court, citing Stephanie's statements she was not learning anything in classes and counseling and the only thing she needed was "to have Jaselle back in [her] custody."

At the review hearing on August 31, Henry testified Stephanie made progress dealing with her substance abuse. She never missed any of her 30 drug tests and tested negative each time, with the exception of the three diluted samples. Stephanie attended all of her monthly appointments with her social worker and informed Henry of all relevant changes in her life.

Henry spoke with Logan only twice during the reporting period. In the first interview, Logan informed the worker Stephanie was doing well. The second and last telephone conversation occurred in June, lasting about five to ten minutes. Logan reported Stephanie continued to make progress dealing with her substance abuse and thought her main problem was mental health. He also noted Stephanie's attendance at counseling had declined the last month and he concurred with Henry's recommendation for terminating services. Henry did not ask Logan why he concurred with her recommendation to terminate services. She attempted to contact Logan in July and August, but he did not return her calls. Henry understood Logan had referred Stephanie to a psychiatrist for one counseling session per month and to prescribe medication, but was unaware of the nature of the treatment because she never contacted the psychiatrist. Stephanie remained in the Dual Diagnosis Program through the summer, unaware of

Henry's decision to terminate services. Henry testified she did not know what kind of progress Stephanie had made since June.

Henry testified that Logan was supposed to provide Stephanie with domestic violence counseling. She expressed concern to Logan in June about Stephanie's domestic violence issues during one of their phone conversations, but failed to inquire about Stephanie's progress, or even if those issues were being addressed in therapy, testifying she had no "information about what kind of service were being provided for the mother by Dr. Logan on this issue."

Henry also failed to ask Logan about mental health prognosis for Stephanie. When Henry learned of a July 2004 domestic violence incident where Fernando kicked Stephanie and poked her with a fork, she directed Stephanie to attend a domestic violence program, but did not make a program referral because Stephanie was optimistic Fernando would not repeat the incident and felt a program was unnecessary.

Stephanie testified she rarely discussed domestic violence issues in depth with Logan, explaining he followed a format consisting of specific questions, although he would discuss any issue she raised. She conceded domestic violence was a potential problem, but hoped there would be no further difficulties. She explained she had trouble making several group therapy sessions because she was working, and revealed she felt uncomfortable discussing sensitive domestic violence issues in a group setting.

The court found by clear and convincing evidence that returning Jaselle to Stephanie would create a substantial risk to the child, reasonable services had been provided, and Stephanie failed to participate regularly in the case plan. In reaching its conclusion, the court specifically referred to Stephanie's domestic violence issues, and questioned her judgment in forming relationships with abusive men. The court explained: "What really causes the court great anxiety is that she lost a child due to domestic violence with a boyfriend that was violent. And then she goes and she gets involved with another man that is just as — maybe not just as violent, but very violent.

[¶] I mean she has some big problems that are going to take more than six months to deal with. I mean there has to be some guilt involved in her psyche that she's got to work out and find why she gravitates to violent men." The court ordered reunification services terminated pursuant to section 366.21, subdivision (g)(1), because "there is not a substantial probability that the minor will be returned to the physical custody of [the parent] within 6 months." The court set a section 366.26 hearing date for January 3, 2005.

II

Stephanie challenges the sufficiency of the evidence to support the court's conclusion reasonable services had been provided. Specifically, she contends the case worker failed to make reasonable efforts to assist her in meeting the domestic violence component of her case plan, emphasizing Henry's admission she never inquired about the domestic violence treatment Stephanie was receiving. She also notes Henry never informed Stephanie that rejection of additional domestic violence referrals would prevent her from regaining custody of her child. We agree.

Section 366.21, subdivision (e), provides that "If the child was under the age of three years on the date of the initial removal . . . and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child . . . may be returned to his or her parent or legal guardian within six months *or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.*" (Italics added.)

The court's finding that reasonable reunification services have been offered or provided to the parent is subject to review for substantial evidence. (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1014 (*Mark N.*)). We view the evidence in

the light most favorable to the ruling below and indulge all legitimate and reasonable inferences to uphold the order. (*Ibid.*)

In dependency proceedings, family preservation is the first priority. (*In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1787.) SSA must make “[a] good faith effort” to provide reasonable services responding to the unique needs of each family. [Citation.] Moreover section 366.21, subdivision (g)(3), requires “clear and convincing evidence” that such services have been offered to the parents. Under this burden of proof, “evidence must be so clear as to leave no substantial doubt. It must be sufficiently strong to command the unhesitating assent of every reasonable mind.” [Citation.]” (*In re Precious J.* (1996) 42 Cal.App.4th 1463, 1472-1473.) Additionally, “[t]he effort must be made to provide reasonable reunification services in spite of difficulties in doing so or the prospects of success.” (*Mark N., supra*, 60 Cal.App.4th at p. 1011.)

Reunification services do not have to be perfect to be reasonable, but here there is no substantial evidence to support SSA’s argument these services passed muster. SSA and the court justifiably focused on Stephanie’s lack of insight into domestic violence issues. But there is no evidence concerning what Logan did in this regard. The case plan provided “mother will address domestic violence issues in counseling” and she “will participate in [a personal empowerment program] if counselor feels she will benefit.” Between March and September, Henry spoke with Logan only twice, apparently for five or ten minutes each time, and never inquired about Stephanie’s progress dealing with domestic violence issues. Indeed, Henry was unaware whether Logan or other therapists had provided any domestic violence counseling. Even after Henry learned of the incident involving Stephanie and Fernando in June, and she determined Jaselle’s return to her mother would hinge on Stephanie’s successful completion of a program, she failed to inform Stephanie that acceptance of a referral for additional services would be required to obtain custody. (See *David B. v. Superior Court*

(2004) 123 Cal.App.4th 768, 773 (*David B.*) [SSA did not tell father a move would be required to obtain custody].)

SSA contends Stephanie should have availed herself of county domestic violence services, arguing it was Stephanie's responsibility to raise domestic violence issues in her individual therapy sessions, which she did on a few occasions. The issue, however, is not whether Stephanie vigorously explored domestic violence issues with her counselor, but whether SSA provided services responsive to Stephanie's unique needs. (See *Mark N.*, *supra*, 60 Cal.App.4th at p. 1010 [services must be "responsive to unique needs of each family"].) "[T]he juvenile court was [not]entitled to assume the services were reasonable, unless someone proved otherwise. [T]he law 'requires "clear and convincing evidence" that such services have been offered to the parents. . . .' [¶] . . . If SSA wishes the court to consider certain actions of the social worker as evidence in a particular case, then SSA must introduce *evidence* that those actions took place in that case. The court cannot merely assume it." (*David B. v. Superior Court*, *supra*, 123 Cal.App.4th at p. 794, original italics.)

SSA described Stephanie as "slow" and unable to comprehend basic information. Treated for substance abuse, depression, and other mental health issues, it was unreasonable to assume Stephanie possessed the insight to insist her therapist focus on these issues and voluntarily avail herself of additional services.

SSA contends "mother received all the domestic violence counseling she wanted," and "nothing suggests mother would have benefited from additional domestic violence services or that she would have successfully reunified if more services had been provided." Based on Stephanie's continued relationship with Fernando, along with her reluctance to acknowledge domestic violence was a problem, SSA argues any additional therapy "would have been as much of a waste as the therapy provided." Reunification services, the county notes, are "voluntary, and cannot be forced on an unwilling or indifferent parent." (*In re Jonathan R.* (1989) 211 Cal.App.3d 1214, 1220.)

SSA's arguments merely underscore Stephanie's need for domestic violence counseling, and we reject SSA's cynical view counseling would have been a "waste." Domestic violence victims, like Stephanie, typically deny or minimize the abuse inflicted by their partners, and rarely possess the skills to extricate themselves from a destructive relationship. Counseling helped Stephanie gain the upper hand in her battle against substance abuse, and she may have achieved similar success had SSA provided the domestic violence services she was entitled to receive. Although Henry was not required to take Stephanie by the hand and escort her through the reunification process, she did have the responsibility of implementing the case plan and should have provided a domestic violence referral even if she believed Stephanie would not benefit from counseling. (*Mark N.*, *supra*, 60 Cal.App.4th at p. 1011 [reunification services must be provided even if chances for success are bleak].) Henry also should have warned Stephanie reunification with Jaselle was unlikely if she chose not to participate in a program. (*David B.*, *supra*, 123 Cal.App.4th at pp. 773-774 [SSA must provide "clear warning" on what is required to regain custody].)

SSA also asserts domestic violence was only one of several reasons for terminating reunification services, and argues Stephanie's failure to frequently visit Jaselle was, by itself, sufficient basis to support the trial court's decision. We disagree. The statute unambiguously provides "the court shall continue the case to the 12-month permanency hearing" where "reasonable services have not been provided." (§ 366.21, subd. (e).) Also, the juvenile court found Stephanie's lack of insight concerning domestic violence was her primary failing.

Aside from Stephanie's failure to visit Jaselle more often,² there is plenty in the record to cause concern, and it may be that Stephanie's problems are too intractable to

² Stephanie did not visit Jaselle as often as allowed by her case plan, but her visits with Jaselle went well. Stephanie's father described how Jaselle enjoyed playing with Stephanie and was happy visiting her mother. Stephanie explained she did not visit

overcome. But at this stage of the proceedings, family reunification is the primary goal. (*David B.*, *supra*, 123 Cal.App.4th at p. 788.) Stephanie was entitled to reasonable services to meet this challenge. The record simply does not support the finding such services were provided.

Because the failure to provide reasonable services required a continuance to a 12-month permanency hearing, we need not reach Stephanie's other contentions.

III

The petition for extraordinary relief is granted. The juvenile court is directed to vacate its orders terminating reunification services and setting a section 366.26 hearing. The court is directed to enter a finding reflecting reasonable services were not provided to Stephanie, and to continue the case to a 12-month permanency hearing.

ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

O'LEARY, J.

Jaselle more often because she became depressed when she had to leave her daughter. This seems plausible for a mother who had been diagnosed with depression and had difficulty coping with the death of her first child. Under these circumstances, Stephanie's failure to visit more often, *by itself*, is insufficient to support the requisite finding of detriment to the child. (*In re Zacharia D.* (1993) 6 Cal.4th 435, 447 [to terminate reunification services, court must find it would be detrimental to the child to be returned to the parent].)